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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,683	03/31/2004	James N. Rothbarth	RHB 8982.4	8322

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EXAMINER

ROSE, HELENE ROBERTA

ART UNIT	PAPER NUMBER
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2163

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,683	<b>Applicant(s)</b> ROTHBARTH ET AL.	
	<b>Examiner</b> Helene Rose	<b>Art Unit</b> 2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### Detailed Action

1. In response to communication entered on 9/26/2006, Claims 1-14 are pending. Claims 1, 3-6, and 13 have been amended; Claim 2 was cancelled. No claims were added.
2. Applicant's arguments, with respect to the rejected claims in view of the cited references have been considered but are moot in view of applicant's amended claims necessitate new ground(s) of rejection.

### Claim Objections

3. Claim 3 is objected to because of the following informalities: Claim 3 has a typo, wherein "at the second compute, includes". Appropriate correction is required.

### Claim Rejections – 35 U.S.C- 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. In view of the rejection, regarding Claim 1 under 112, second paragraph reciting the following limitation "or", which rendered the claim vague and indefinite. **Examiner withdraws the pending rejection based on the amendment to claim 1.**

6. Claim 1 (and its dependent claims where, applicable) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the portable computer readable medium". There is insufficient antecedent basis for this limitation in the claim.

**Claim Rejections – 35 U.S.C – 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey, III (hereinafter Bailey, Date of Patent: August 19, 1997) in view of McClain et al (US Patent No. 6,049,874, Date Filed: March 12, 1998).

**Claim 1:**

Regarding claim 1, Bailey teaches a method for facilitating the transfer of back-up copies of one or more files (Figure 1, diagram 54, column 5, lines 31-33, wherein files are defined, and column 5, lines 24-26, wherein transferred is defined, Bailey) from a first computer to a second computer (Figure 1, all features and column 4, lines 63-66, wherein the first computer is interpreted to be client computer and the second computer is interpreted to be the backup computer, Bailey); comprising:

designating files from the first computer for which back-up copies will be transferred to the second computer (column 5, lines 24-33, wherein data that is to be backed up is transferred via a transmission medium to a backup computer at the remote backup site, Bailey);

Bailey discloses the above limitation. However, Bailey does not disclose wherein **receiving, at the first computer, user input defining destination identification data.**

On the other hand, McClain does disclose wherein:

receiving, at the first computer, user input defining destination identification data (columns 4-5, lines 60-67 and lines 1-5, wherein changes to a first block of the local file are received, wherein the changes are established by a user of the user computer generating input events, and immediately upon receiving the changes at least the first block is designated as a transmission block to be transmitted to the data center for updating the remote version, wherein this is interpreted to be "user input defining destination identification data", McClain);

It would have been obvious to one of the ordinary skill in the art at the time of the invention to incorporate McClain teaching into Bailey system. A skilled artisan would have been motivated to combine as suggested by McClain a method for reducing the time required to restore files. As a result, establishing and improved method of securing data transmission.

identifying a location of the second computer as a function of the defined identification data (see abstract, wherein identifying the changed block, is interpreted to be identifying a location, McClain);

selectively transferring (column 5, lines 12-14, wherein transmitting the block from the data center to the user computer, and selecting one of the keys from the key file, McClain), based on a total size of the files being transformed (column 3, lines 53-55, wherein when the size of the transfer chunk equals a predetermined size, the transfer chunk is transmitted to the data center, McClain), the designated files and file data from the first computer to the second computer or to a portable computer readable medium (column 4, lines 1-4, wherein stored on the portable data storage medium, McClain);

wherein the designated files and file data are transferred to second computer at the identified location via a communication network when a total size of the files are being

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transferred is less than a target amount, and wherein the designated files and file data are transferred from the first computer to the portable computer readable medium when the total size of the files are being transferred is greater than the target amount (column 9, lines 23-30, wherein changes to the sector are large and the goal is to store only relatively small changes and column 11, lines 35-41, wherein the transmission file is a file of finite size determine by the channel capacity analysis such that less than all files to be transmitted may fit within the transmission file, wherein only files within the transmission files are transmitted to the backup site and when the transmission is file is full no other files may be transmitted to the backup site until all the contents of the transmission file have been transmitted to the backup site, Bailey);

receiving (Figure 8, diagram 420, defines a method of receiving, Bailey), at the second computer, the selectively transferred files and file data, wherein said received file data includes authentication data for determining whether the first computer is authorized to store back-up copies on the second computer (column 6, lines 9-21, wherein first level of encryption is defined and wherein the second level of encryption is defined, Bailey); and

storing, at the second computer, the received files when the first computer is determined to be authorized (Figure 10, all features and column 57-67, wherein encoding process is defined and initialized and column 16, lines 9-11, wherein if the file is an encoding type file, the method follows yes, where the file data is read, Bailey).

**Claim 3:**

Regarding claim 3, the combination of Bailey in view of McClain teaches **wherein the receiving, at the second computer, includes:**

delivering the portable computer readable medium **having transferred files and file data stored thereon** to a user of the **second** computer (column 10, lines 57-60, wherein available

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transmission time can be set in several ways including a default value, a client determined value, and a value transmitted by the backup site to the client site, Bailey); and

transferring the files from the delivered portable computer readable medium to the second computer for storage (column 5, lines 26-33, wherein the backup computer includes a memory that includes a program registry that stores a list of many commonly used, commercially available programs, and wherein the client files, i.e. interpreted to be the first computer, to be backed up are stored on a backup storage medium and column 10, lines 30-34, wherein transmitting files from the client site to the backup site in sequence based on the priority of the files and capacity of the transmission medium, Bailey).

**Claim 4:**

Regarding claim 4, the combination of Bailey in view of McClain teaches wherein designating files includes displaying a first input form on a display linked to the first computer, said first input form receiving input data from a user (Figure 8, diagram 420 and 422, Bailey), and said input data designating the one or more files to be copied (Figure 8, diagrams 420 and 430, Bailey) and transferred to the **second computer** (Figure 8, diagram 436, and 438, wherein portable is interpreted to a portable storage medium, Bailey).

**Claim 5:**

Regarding claim 5, the combination of Bailey in view of McClain teaches wherein first transferring files include encrypting the designated files prior to transferring the designated files to the portable computer readable medium **or to the second computer** (Figure 1, diagrams 36, and 44, wherein encryption occurs first and column 3, lines 18-20, wherein data blocks within each file are examined, if they are identical to prior data blocks transmitted to the backup site during a previous backup operation, Bailey).

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**Claim 6:**

Regarding claim 6, the combination of Bailey in view of McClain teaches wherein transferring files **further** includes transferring authentication data to the portable computer readable medium **when the total size of the files being transferred is greater than the target size** (Figure 1, diagrams 36, and 44, wherein encryption program is interpreted to encode (scramble) information in such a way that it is unreadable to all but those individuals possessing the key to the code, and sent to the transmission medium which is interpreted to be the process of converting encrypted data or text back to plain data or text, Bailey).

**Claim 7:**

Regarding claim 7, the combination of Bailey in view of McClain teaches wherein the receiving includes retrieving first authentication data from the portable computer readable medium (column 17, lines 2-6, wherein the first level of encryption is defined and column 18, lines 45-52, Bailey) and retrieving second authentication data from the second computer (column 17, lines 14-16, wherein the second encryption is performed and defined and column 18, lines 53-59, Bailey), wherein said first authentication data defines a first password and said second authentication data defines a second password (Figure 1, diagram 50, wherein decrypt is the process of converting encrypted data or text back to plain data or text, Figure 10, diagram 274, wherein pass code is defined and column 17, lines 17-21, Bailey) , and comparing the first password to the second password to determine if the passwords match (Figure 10, diagram 274, wherein pass code is associated with element to data security card, Bailey), and wherein the one or more files are stored on the second computer if the first and second passwords are determined to match (Figure 13, diagram 216 and column 23, lines 60-63, wherein generated code matches a code in the database, Bailey).

Claim 8:

Regarding claim 8, the combination of Bailey in view of McClain teaches retrieving, at the second computer, a first identification tag from the portable computer readable medium (Figure 10, diagram 262, wherein file to be examined, Bailey), said identification tag being randomly generated by the first computer to identify the one or more files to be transferred from the portable computer readable medium to the second computer (Figure 10, diagram 272, Bailey);

sending an authentication request including the first identification tag to the first computer via the communication network (Figure 1, diagrams 36 and 44, wherein transmission medium is interpreted to be the type of cable/wireless system used to connect the network devices, Bailey);

receiving, at the first computer, the authentication request and the first identification tag (column 6, lines 15-21, Bailey); comparing, at the first computer, the received first identification tag with an second identification tag being stored on the originating computer to determine if the tags match (column 23, lines 60-63, Bailey), wherein the second identification tag corresponds to a tag previously generated by the first computer to identify a particular file or particular set files being transferred to a portable computer readable medium (column 6, lines 64-67, Bailey);

requesting, at the first computer, input from an originating user to confirm back up is authorized if there is a matching tag (column 23-36, wherein comparing and key is obtained, Bailey);

sending a reply including the user input to the second computer via the communication network (column 16, lines 39-42, wherein data security card transfers the corresponding code, Bailey); and

determining whether the first computer is authorized as a function of the user input included in the reply (Figure 10, all features and column 57-67, wherein encoding process is defined and

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initialized and column 16, lines 9-11, wherein if the file is an encoding type file, the method follows yes, where the file data is read, Bailey).

**Claim 9:**

Regarding claim 9, the combination of Bailey in view of McClain teaches wherein storing files includes retrieving storage amount data and file storage data from a destination database (column 7, lines 63-67, Bailey), said storage amount data defining a maximum amount of storage space available on the second computer for storing files transferred from the first computer (column 9, lines 4-8 and lines 23-30, Bailey), and said file storage data specifying a current amount of storage space on the second computer being used for storing files from the first computer (column 9, lines 4-14, Bailey), and wherein storing files further comparing the storage amount data to file storage data to determine if storage space is available (column 9, lines 47-56), and wherein the back-up copies of the one or more designated files stored on the portable computer readable medium are stored on the second computer if storage space is determined to be available (column 9, lines 57-67, Bailey).

**Claim 10:**

Regarding claim 10, the combination of Bailey in view of McClain teaches wherein designating files for transfer (column 11, lines 4-5, wherein the higher rated file will be transmitted to the backup site, Bailey) further includes:

designating a destination identifier associated with the second computer (Figure 8, diagram 432, Bailey);

designating storage schedule data for back-up copies (column 11, lines 9-10, wherein the time of most recent backups, Bailey); and

storing the back-up copies of the designated one or more files, the designated destination identifier, and/or the designated storage schedule data in an originating database (column 11, lines 5-

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17, wherein the time of most recent backup is defined and lines 35-45, wherein transmission file is a file of finite size, and contents of the transmitted to the backup site, Bailey).

**Claim 11:**

Regarding claim 10, the combination of Bailey in view of McClain teaches wherein designating files includes displaying a first input form on a display linked to the first computer, said first input form receiving input data from a user, and said input data designating the one or more files to be copied and transferred to the second computer, designating the one or more back-up times, and/or designating the destination identifier (column 11, lines 5-17, wherein the time of most recent backup is defined and lines 35-45, wherein transmission file is a file of finite size, and contents of the transmitted to the backup site, Bailey).

**Claim 12:**

Regarding claim 12, the combination of Bailey in view of McClain teaches retrieving one or more stored files from the second computer in response to a request received from the originating user (column 18, lines 58-67, Bailey);

transferring the retrieved files to the portable computer medium (column 5, lines 26-33, wherein the backup computer includes a memory that includes a program registry that stores a list of many commonly used, commercially available programs, and wherein the client files, i.e. interpreted to be the first computer, to be backed up are stored on a backup storage medium and column 10, lines 30-34, wherein transmitting files from the client site to the backup site in sequence based on the priority of the files and capacity of the transmission medium, Bailey); and

delivering the portable computer medium to the originating user (column 10, lines 57-60, wherein available transmission time can be set in several ways including a default value, a client determined value, and a value transmitted by the backup site to the client site, Bailey).

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Claim 13:

Regarding Claim 13, the combination of Bailey in view of McClain teaches a method for facilitating the transfer of back-up copies of one or more files (Figure 1, diagram 54, column 5, lines 31-33, wherein files are defined, and column 5, lines 24-26, wherein transferred is defined, Bailey) from a first computer to a second computer (Figure 1, all features and column 4, lines 63-66, wherein the first computer is interpreted to be client computer and the second computer is interpreted to be the backup computer, Bailey); comprising:

designating files from the first computer for which back-up copies will be transferred to the second computer (column 5, lines 24-33, wherein data that is to backed up is transferred via a transmission medium to a backup computer at the remote backup site, Bailey);

**receiving, at the first computer, user input defining destination identification data (Refer to claim 1, wherein this limitation is substantially the same/or similar, McClain);**

**identifying a location of the second computer as a function of the defined identification data (Refer to claim 1, wherein this limitation is substantially the same/or similar, McClain);**

**transferring the files from the verified first computer to a portable computer readable medium (column 11, lines 52-58, wherein the file in the transmission file undergo file change analysis, and encryption, and so forth, Bailey);**

**selectively delivering the portable computer readable medium to a user of the destination computer based on an amount of data in the one or more files to be transferred (Refer to claim 1, wherein this limitation is substantially the same/or similar), wherein the portable computer readable medium is physically delivered to the destination user when the amount of data to be**

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transferred is greater than or equal to a target amount (**Refer to claim 1, wherein this limitation is substantially the same/or similar**) , and wherein the one or more files are transferred from the first computer to the second computer via communication network when the amount of data to be transferred is less than the target amount(**Refer to claim 1, wherein this limitation is substantially the same/or similar, Bailey**) .

Claim 14:

Regarding claim 14, the combination of Bailey in view of McClain teaches wherein the originating user determines the target amount (column 11, lines 35-38, wherein finite size is interpreted to be limited or restricted in nature, Bailey).

**Examiner Response to Arguments**

Applicant argues prior art fails to teach, “identifying a destination computer (or backup site) as function of user input designating a destination ID that corresponds to the address of the destination computer”, cited on page 9 of applicants remarks.

Examiner respectfully disagrees, wherein applicant argues an **amended claim**. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identifying a destination computer (or backup site) as function of user input designating a destination ID that corresponds to the address of the destination computer) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues prior art fails to teach, "identifying a backup computer as a function of destination data received from a user and selecting transferring file data to a destination computer via a communication network based on a total size of the files being transferred", *cited* on page 10 of applicants remarks.

Examiner respectfully disagrees, wherein applicant argues an **amended claim**. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identifying a backup computer as a function of destination data received from a user and selecting transferring file data to a destination computer via a communication network **based on a total size of the files being transferred**) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

#### **Prior Art of Record**

(The prior art made of record and not relied upon is considered pertinent to applicant's disclosure)

1. Bailey, III (US Patent No. 5,659,614) discloses a method and system for prioritizing, securing, and reducing the amount of data transmitted and stored during the creation of a backup copy of file data.
2. McClain et al (US Patent No. 6,049,874) discloses a system backs up computer files to a remote site via modem, LAN, WAN, or other network device.

### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### Point of Contact

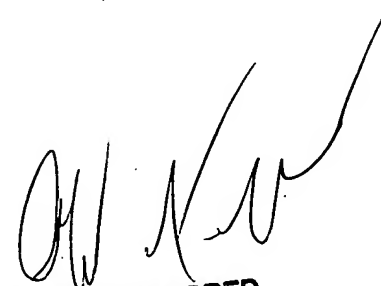
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helene R. Rose whose telephone number is (571) 272-0749. The examiner can normally be reached on 8:00am - 4:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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December 8, 2006



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